

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TERRANCE FOMBY,

Petitioner,

v.

CASE NO. 05-CV-73187-DT
HONORABLE ARTHUR J. TARNOW

ANDREW JACKSON,

Respondent.

_____ /

**ORDER GRANTING A CERTIFICATE OF APPEALABILITY AND
GRANTING LEAVE TO PROCEED ON APPEAL *IN FORMA PAUPERIS***

This matter is before the Court on Petitioner's requests for a certificate of appealability and for leave to proceed on appeal *in forma pauperis* concerning the Court's denial of his habeas petition.

This Court denied Petitioner's habeas claim on the merits. A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When a federal district court rejects a habeas claim on the merits, the substantial showing threshold is met if the petitioner demonstrates that reasonable jurists would find the district court's assessment of the constitutional claim debatable or wrong. *See Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). "A petitioner satisfies this standard by demonstrating that . . . jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). In applying this standard, a district court may not conduct a full merits review, but must limit its examination to a threshold inquiry into the underlying merit of the petitioner's claims. *Id.* at

336-37.

Petitioner asserts that the state trial court violated his confrontation rights, due process, and his right to present a defense by excluding evidence of a prior dispute between the victim and Petitioner's sister. While the Court has concluded that Petitioner's federal constitutional rights were not violated by the exclusion of the evidence, the Court believes that Petitioner has made a substantial showing of the denial of a constitutional right. A reasonable jurist could potentially conclude that the exclusion of evidence was detrimental to Petitioner's confrontation rights and/or his right to present a defense. Accordingly, the Court **GRANTS** a certificate of appealability. Given this determination, the Court **GRANTS** Petitioner's application to proceed *in forma pauperis* on appeal. See Fed. R. App. P. 24(a).

SO ORDERED.

s/Arthur J. Tarnow
Arthur J. Tarnow
United States District Judge

Dated: May 16, 2007

I hereby certify that a copy of the foregoing document was served upon counsel of record on May 16, 2007, by electronic and/or ordinary mail.

s/Catherine A. Pickles
Judicial Secretary